RECORD
AND
BRIEFS

Supreme Court, U.S.
FILED
AUG 22 2016
OFFICE OF THE CLERK

No. 15-497

In the Supreme Court of the United States

STACY FRY, BRENT FRY, AND EF, A MINOR, BY HER NEXT FRIENDS STACY FRY AND BRENT FRY,

Petitioners,

v.

NAPOLEON COMMUNITY SCHOOLS, JACKSON COUNTY INTERMEDIATE SCHOOL DISTRICT, AND PAMELA BARNES, IN HER INDIVIDUAL CAPACITY,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

JOINT APPENDIX

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August 22, 2016

Petition for Writ of Certiorari filed October 15, 2015

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Exhibit A to the Complaint (December 17, 2012) ..... JA 16

The following have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the Petition for a Writ of Certiorari:

Appendix A Opinion/Judgment in the United States Court of Appeals for the Sixth Circuit (June 12, 2015) ..... App. 1

Appendix B Opinion and Order/Judgment in the United States District Court, Eastern District of Michigan Southern Division (January 10, 2014) ..... App. 37

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The following have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the Brief in Opposition:

Petitioners' Complaint ..... Resp. App. 1

20 U.S.C. §1400 ..... Resp. App. 23

20 U.S.C. §1401 ..... Resp. App. 30

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RELEVANT DOCKET ENTRIES

United States District Court for the Eastern District of Michigan (Detroit)

2:12-cv-15507-LPZ-DRG

EF v. Napoleon Community Schools, et al.

Date Filed	#	Docket Text
12/17/2012	1	COMPLAINT filed by E. F. against Pamela Barnes, Jackson County Intermediate School District, Napoleon Community Schools with Jury Demand. Plaintiff requests summons issued. Receipt No: 0645-3858882 - Fee: $ 350. County of 1st Plaintiff: Jackson - County Where Action Arose: Jackson - County of 1st Defendant: Jackson. [Previously dismissed case: No] [Possible companion case(s): None] (Kellett, Peter) (Entered: 12/17/2012)
12/18/2012		NOTICE of Error directed to: Peter M. Kellett re 1 Complaint,,. Parties listed on the initiating document were omitted. The filing attorney must use the docket event Addition of Parties to correct the error. [No Image

		Associated with this docket entry] (DTyl) (Entered: 12/18/2012)
12/18/2012	2	SUMMONS Issued for *Pamela Barnes, Jackson County Intermediate School District, Napoleon Community Schools* (DTyl) (Entered: 12/18/2012)
12/18/2012		Addition of Parties to CM/ECF: Plaintiffs Stacy Fry, Brent Fry. Reason: The party was not added to CM/ECF when e-filing 1 Complaint,, (Kellett, Peter) (Entered: 12/18/2012)
12/18/2012	3	NOTICE of Appearance by Brandon M. Blazo on behalf of All Plaintiffs. (Blazo, Brandon) (Entered: 12/18/2012)
12/18/2012	4	NOTICE of Appearance by James F. Hermon on behalf of EF. (Hermon, James) (Entered: 12/18/2012)
12/18/2012	5	NOTICE of Appearance by Michael J. Steinberg on behalf of All Plaintiffs. (Steinberg, Michael) (Entered: 12/18/2012)
01/10/2013	6	CERTIFICATE of Service/Summons Returned Executed. Napoleon Community Schools served on 12/31/2012, answer due 1/22/2013. (Blazo,

		Brandon) (Entered: 01/10/2013)
01/10/2013	7	CERTIFICATE of Service/Summons Returned Executed. Jackson County Intermediate School District served on 12/29/2012, answer due 1/22/2013. (Blazo, Brandon) (Entered: 01/10/2013)
01/10/2013	8	ATTORNEY APPEARANCE: Denise M. Heberle appearing on behalf of All Plaintiffs (Heberle, Denise) (Entered: 01/10/2013)
01/11/2013	9	NOTICE of Appearance by Timothy J. Mullins on behalf of All Defendants. (Mullins, Timothy) (Entered: 01/11/2013)
01/18/2013	10	ORDER DISMISSING PLAINTIFF'S STATE-LAW CLAIM Signed by District Judge Lawrence P. Zatkoff. (MVer) (Entered: 01/18/2013)
02/11/2013	11	ANSWER to Complaint with Affirmative Defenses with Jury Demand by All Defendants. (Mullins, Timothy) (Entered: 02/11/2013)
02/11/2013	12	NOTICE of Appearance by Kenneth B. Chapie on behalf of All Defendants. (Chapie, Kenneth) (Entered: 02/11/2013)

02/13/2013	13	NOTICE TO APPEAR: **Scheduling Conference set for 3/26/2013 10:30 AM before District Judge Lawrence P. Zatkoff IN PORT HURON** (MVer) (Entered: 02/13/2013)
03/21/2013	14	DISCOVERY plan jointly filed pursuant to Federal Rules of Civil Procedure 26(f) (Blazo, Brandon) (Entered: 03/21/2013)
03/26/2013		Minute Entry - Scheduling Conference held on 3/26/2013 before District Judge Lawrence P. Zatkoff. (MVer) (Entered: 03/26/2013)
04/04/2013	15	ANSWER to Complaint with Affirmative Defenses with Jury Demand *AMENDED* by All Defendants. (Mullins, Timothy) (Entered: 04/04/2013)
04/05/2013	16	SCHEDULING ORDER: **Discovery due by 10/10/2013 Dispositive Motion Cut-off set for 10/31/2013 Final Pretrial Conference set for 3/13/2014 10:00 AM before District Judge Lawrence P. Zatkoff** Signed by District Judge Lawrence P. Zatkoff. (Refer to image for additional dates) (MVer) (Entered: 04/05/2013)

07/24/2013	17	MOTION to Dismiss by All Defendants. (Attachments: # 1 Index of Exhibits, # 2 Exhibit 1. COMPLAINT, # 3 Exhibit 2. MICHIGAN DEPARTMENT OF EDUCATION SAFEGUARD MANUAL, # 4 Exhibit 3. MICHIGAN DEPARTMENT OF EDUCATION SPECIAL EDUCATION DUE PROCESS COMPLAINT PROCEDURES, # 5 Exhibit 4. SHARBOWSKI V UTICA COMMUNITY SCHOOLS) (Mullins, Timothy) (Entered: 07/24/2013)
08/19/2013	18	RESPONSE to 17 MOTION to Dismiss *Response to Motion for Judgment on the Pleadings* filed by All Plaintiffs. (Hermon, James) (Entered: 08/19/2013)
09/04/2013	19	REPLY to Response re 17 MOTION to Dismiss filed by All Defendants. (Mullins, Timothy) (Entered: 09/04/2013)
10/01/2013	20	STIPULATION AND ORDER STAYING SCHEDULING ORDER UNTIL MOTION TO DISMISS IS DECIDED Signed by District Judge Lawrence P. Zatkoff. (MVer) (Entered: 10/01/2013)

12/04/2013	21	NOTICE of Appearance by Susan Asam on behalf of EF. (Asam, Susan) (Entered: 12/04/2013)
12/04/2013	22	NOTICE of Withdrawal of Attorney Brandon M. Blazo for on behalf of All Plaintiffs. (Blazo, Brandon) (Entered: 12/04/2013)
01/10/2014	23	ORDER granting 17 Motion to Dismiss. Signed by District Judge Lawrence P. Zatkoff. (MVer) (Entered: 01/10/2014)
01/10/2014	24	JUDGMENT in favor of Defendant Signed by District Judge Lawrence P. Zatkoff. (MVer) (Entered: 01/10/2014)
02/05/2014	25	NOTICE OF APPEAL by All Plaintiffs. Receipt No: 0645-4487942 - Fee: $ 505 - Fee Status: Fee Paid. (Asam, Susan) (Entered: 02/05/2014)
02/05/2014	26	Certificate of Service re 25 Notice of Appeal. (TMcg) (Entered: 02/05/2014)
06/12/2015	27	JUDGMENT from U.S. Court of Appeals - Sixth Circuit re 25 Notice of Appeal filed by Stacy Fry, EF, Brent Fry [Appeal Case Number 14-1137] (KCla) (Entered: 06/29/2015)

08/18/2015	28	MANDATE from U.S. Court of Appeals - Sixth Circuit as to 25 Notice of Appeal filed by Stacy Fry, EF, Brent Fry [Appeal Case Number 14-1137] (KCla) (Entered: 08/25/2015)
10/23/2015	29	LETTER from the US Supreme Court that a petition for writ of certiorari was filed on 10/15/2015. [Supreme Court Case Number: 15-497] [Court of Appeals Case Number: 14-1137] (Ahmed, N) (Entered: 10/23/2015)
06/28/2016	30	LETTER from the US Supreme Court granting the petition for writ of certiorari [Supreme Court Case Number: 15-497] [Court of Appeals Case Number: 14-1137] (Ahmed, N) (Entered: 06/28/2016)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

14-1137

Stacy Fry, et al. v. Napoleon Community Schools, et al.

02/06/2014	1	Civil Case Docketed. Notice filed by Appellants EF, Brent Fry and Stacy Fry. Transcript needed: n. (JRH)
02/06/2014	2	The case manager for this case is: Jeanine Hance (JRH)
02/06/2014	3	BRIEFING LETTER SENT setting briefing schedule: appellant brief due 03/21/2014; appellee brief due 04/23/2014. (JRH)
02/10/2014	4	Mediation Office is involved in this appeal. (LMR)
02/10/2014	5	A Telephone Mediation conference has been scheduled for 03/05/2014 at 9:30 AM (ET) with Deborah Ginocchio. [Please open notice for important details and deadlines.] (LMR)
02/12/2014	6	The Telephone Mediation conference has been rescheduled for 03/27/2014 at 9:30 AM (ET) with Deborah Ginocchio. [Please open notice for important details and deadlines.] (LMR)

02/12/2014	7	BRIEFING LETTER SENT by Mediation Office, resetting briefing schedule: appellant brief now due 04/11/2014. appellee brief now due 05/14/2014. (LMR)
02/19/2014	8	APPEARANCE filed for Appellees Pamela Barnes, Jackson County Intermediate School District and Napoleon Community Schools by Timothy J. Mullins. Certificate of Service: 02/19/2014. (TJM)
02/19/2014	9	CORPORATE DISCLOSURE STATEMENT filed by Attorney Mr. Timothy John Mullins for Appellee Jackson County Intermediate School District. Certificate of Service: 02/19/2014.--[Edited 02/19/2014 by JRH] (TJM)
02/19/2014	10	CORPORATE DISCLOSURE STATEMENT filed by Attorney Mr. Timothy John Mullins for Appellee Napoleon Community Schools. Certificate of Service: 02/19/2014.--[Edited 02/19/2014 by JRH] (TJM)
02/19/2014	11	APPEARANCE filed for EF and Appellants Brent Fry and Stacy Fry by James F. Hermon. Certificate of Service: 02/19/2014. (JFH)
02/19/2014	12	CIVIL APPEAL STATEMENT OF PARTIES AND ISSUES filed by

Attorney Mr. James Frederick Hermon for Appellants Stacy Fry and Brent Fry. Certificate of Service:02/19/2014. (JFH)

02/19/2014 13 CORPORATE DISCLOSURE STATEMENT filed by Attorney Mr. James Frederick Hermon for Appellants Stacy Fry and Brent Fry Certificate of Service: 02/19/2014. (JFH)

02/19/2014 14 TRANSCRIPT ORDER FORM filed by Mr. James Frederick Hermon for Stacy Fry and Brent Fry; Transcript not needed. Certificate of Service: 02/19/2014. (JFH)

03/17/2014 15 The Telephone Mediation Conference has been rescheduled for 04/14/2014 at 1:30 PM (ET) with Deborah Ginocchio. [Please open notice for important details and deadlines.] (MLB)

03/17/2014 16 BRIEFING LETTER SENT by Mediation Office, resetting briefing schedule: appellant brief now due 04/28/2014. appellee brief now due 06/02/2014. (MLB)

04/14/2014 17 Mediation Office is no longer involved in this appeal. (MLB)

04/28/2014 18 **LOCKED**APPELLANT BRIEF filed by Mr. James Frederick

Hermon for Stacy Fry and Brent Fry. Certificate of Service:04/28/2014. Argument Request: requested.(CORRECTIONS NEEDED-SEE LETTER)--[Edited 04/28/2014 by JRH] (JFH)

04/28/2014 19 BRIEFING LETTER SENT requesting brief corrections from Mr. James Frederick Hermon for Stacy Fry and Brent Fry due to the incorrect PAGE ID#s used in the citations of the brief and on the Designation of Relevant District Court Documents Page. Corrections due: 05/12/2014., resetting briefing schedule: appellee brief now due 06/16/2014. (JRH)

04/28/2014 20 CORRECTED APPELLANT'S BRIEF filed by Mr. James Frederick Hermon for Stacy Fry and Brent Fry. Certificate of Service:04/28/2014. Argument Request: requested.--[Edited 06/17/2014 by JRH] (JFH)

06/16/2014 21 APPELLEE BRIEF filed by Mr. Timothy John Mullins for Napoleon Community Schools, Pamela Barnes and Jackson County Intermediate School District. Certificate of Service:06/16/2014. Argument Request: requested. (TJM)

07/03/2014 22 **LOCKED**REPLY filed by Mr. James Frederick Hermon for Stacy Fry and Brent Fry regarding Reply *Brief of Plaintiffs-Appellants Stacy Fry, Brent Fry, And EF, A Minor, By Her Next Friends Stacy Fry And Brent Fry*. Certificate of Service: 07/03/2014. (INCORRECT RELIEF - SHOULD BE FILED AS A "REPLY BRIEF"- PLEASE REFILE)--[Edited 07/03/2014 by JRH] (JFH)

07/03/2014 23 REPLY BRIEF filed by Attorney Mr. James Frederick Hermon for Appellants Stacy Fry and Brent Fry. Certificate of Service:07/03/2014. (JFH)

08/13/2014 24 Oral argument date set for 9:00 am October 1, 2014. Notice of argument sent to counsel on 08/13/2014. (DC)

08/14/2014 25 Oral argument acknowledgement filed by Attorney Mr. James Frederick Hermon for Appellants Stacy Fry and Brent Fry. Certificate of Service: 08/14/2014. (JFH)

08/27/2014 26 APPEARANCE filed for Appellees Pamela Barnes and Jackson County Intermediate School District by Kenneth B. Chapie. Certificate of Service: 08/27/2014. (KBC)

08/27/2014 27 **LOCKED**Oral argument acknowledgement filed by Attorney

Mr. Timothy John Mullins for Appellees Napoleon Community Schools, Pamela Barnes and Jackson County Intermediate School District. Certificate of Service: 08/27/2014. (INCORRECT ACCOUNT USED - REFILE)--[Edited 08/27/2014 by JRH] (TJM)

08/27/2014 28 Oral argument acknowledgement filed by Attorney Mr. Kenneth Bennett Chapie for Appellees Napoleon Community Schools, Pamela Barnes and Jackson County Intermediate School District. Certificate of Service: 08/27/2014. (KBC)

10/01/2014 29 CAUSE ARGUED by Mr. James Frederick Hermon for Appellants Stacy Fry and Brent Fry and Mr. Timothy John Mullins for Appellees Napoleon Community Schools, Pamela Barnes and Jackson County Intermediate School District before Daughtrey, Circuit Judge; Rogers, Circuit Judge and Donald, Circuit Judge. (KSC)

11/12/2014 30 APPEARANCE filed for EF and Appellants Brent Fry and Stacy Fry by Michael J. Steinberg. Certificate of Service: 11/12/2014. (MJS)

06/12/2015 31 OPINION and JUDGMENT filed : The judgment of the district court is AFFIRMED. Decision for publication. Martha Craig Daughtrey (DISSENTING), John M. Rogers (AUTHORING), and Bernice Bouie Donald, Circuit Judges. (CL)

06/25/2015 32 APPEARANCE filed for EF and Appellants Brent Fry and Stacy Fry by Jill M. Wheaton. Certificate of Service: 06/25/2015. (JMW)

06/25/2015 33 APPEARANCE filed for EF and Appellants Brent Fry and Stacy Fry by Theodore J. Greeley. Certificate of Service: 06/25/2015. (TJG)

06/26/2015 34 APPEARANCE filed for EF and Appellants Brent Fry and Stacy Fry by Samuel R. Bagenstos. Certificate of Service: 06/26/2015. (SRB)

06/26/2015 35 PETITION for en banc rehearing filed by Mr. Theodore Joseph Greeley for Stacy Fry and Brent Fry. Certificate of Service: 06/26/2015. (TJG)

07/02/2015 36 LETTER SENT to Mr. Kenneth Bennett Chapie for Napoleon Community Schools, Pamela Barnes and Jackson County Intermediate School District, notifying that he is directed to respond to petition for en banc rehearing filed by Mr. Theodore

Joseph Greeley. Response due 07/16/2015. (BLH)

07/16/2015 37 RESPONSE to petition for en banc rehearing, [35], previously filed by filed by Mr. Theodore Joseph Greeley in 14-1137. Response filed by Mr. Timothy John Mullins for Napoleon Community Schools, Pamela Barnes and Jackson County Intermediate School District. Certificate of service: 07/16/2015. (TJM)

08/05/2015 38 ORDER filed denying petition for en banc rehearing [35] filed by Mr. Theodore Joseph Greeley. Martha Craig Daughtrey, John M. Rogers, and Bernice Bouie Donald, Circuit Judges. (BLH)

08/18/2015 39 MANDATE ISSUED with no costs taxed. (PJE)

10/23/2015 40 U.S. Supreme Court notice filed regarding a petition for a writ of certiorari filed by Appellant Stacy Fry. Supreme Court Case No:15-497, 10/15/2015. (CL)

06/28/2016 41 U.S. Supreme Court letter filed granting the petition for a writ of certiorari [40] filed by Stacy Fry.. Supreme Court Case No: 15-497, 06/28/2016.. (CL)

COMPLAINT
[R. 1 12/17/12]

EXHIBIT A

UNITED STATES DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS, REGION XV

600 SUPERIOR AVENUE EAST, SUITE 750
CLEVELAND, OH 44114-2611

REGION XV
MICHIGAN
OHIO

MAY 03 2012

Jordan M. Bullinger, Esquire
LaPointe & Butler, P.C.
Attorneys at Law
2143 Commons Parkway
Okemos, Michigan 48864-3987

Re: OCR Docket #15-10-1268 and #15-10-1269

Dear Mr. Bullinger:

This letter is to inform you of the disposition of the above-referenced complaints filed against the Napoleon Community Schools (the District) and the Jackson County Intermediate School District (the ISD), which the U.S. Department of Education (Department), Office for Civil Rights (OCR) received on July 30, 2010. The Complainant alleged that the District and the ISD discriminated against an elementary school student (the Student) on the basis of her disabilities. Specifically, the Complainant alleged that: (1) the

District and the ISD excluded the Student from and/or limited her participation in their educational programs and activities when they refused to allow the Student to have her dog, a trained service animal, accompany her to school; and (2) the District treated the Student differently from students without disabilities by limiting her outside recess activities choices when students without disabilities were not required to similarly limit their choices.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the Department. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq*., and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. As recipients of Federal financial assistance from the Department and as a public school system, the District and the ISD are subject to these laws. OCR therefore had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR investigated the following issues:

- whether the District and the ISD (collectively, the Recipients) excluded a qualified student with a disability from participation in, denied her the benefits of, or otherwise subjected the student to discrimination on the basis of disability in violation of the Title II implementing regulation at 28 C.F.R. § 35.130(a) and the Section 504 implementing regulation at 34 C.F.R. § 104.4(a);

- whether the Recipients afforded a qualified student with a disability an opportunity to participate in or benefit from an aid, benefit, or service that was not equal to that afforded to others in violation of the Title II implementing regulation at 28 C.F.R. § 35.130(b)(1)(ii) and the Section 504 implementing regulation at 34 C.F.R. § 104.4(b)(1)(ii); and

- whether the District provided different or separate aids, benefits, or services to a qualified student with a disability without such action being necessary to provide the student with the aid, benefit, or service that is as effective as that provided to others in violation of the Title II implementing regulation at 28 C.F.R. § 35.130(b)(1)(iv) and the Section 504 implementing regulation at 34 C.F.R. § 104.4(b)(1)(iv).

In conducting its investigation, OCR reviewed information and documentation provided by both the Complainant and the Recipients. After a careful analysis, OCR has determined that the evidence is sufficient to conclude that the Recipients excluded the Student from and/or limited her participation in their educational programs and activities when they refused to allow her to have her service animal accompany her in parts of the school's program in violation of the Title II implementing regulation at 28 C.F.R. § 35.130(a) and the Section 504 implementing regulation at 34 C.F.R. § 104.4(a). In addition, OCR has determined that the Recipients did not afford the Student an opportunity to participate in or benefit from an aid, benefit, or service that was not equal to that afforded to others in

violation of the Title II implementing regulation at 28 C.F.R. § 35.130(b)(1)(ii) and the Section 504 implementing regulation at 34 C.F.R. § 104.4(b)(1)(ii). With respect to the alleged different treatment regarding recess, prior to the completion of OCR's investigation of that issue, the Recipients asked to resolve the complaint allegation pursuant to Section 302 of OCR's case processing manual.

- **Summary of Case Investigation – Service Animal Allegation**

The Student is eight years old and has cerebral palsy, which significantly limits her motor skills and mobility but does not impact her cognitively. For instance, she has significant weakness in her hip, leg, and knee muscles, which affects her ability to balance herself while using a walker. The Student also has a diagnosis of attention deficit hyperactivity disorder (ADHD) and has a history of seizures.

During the 2009-2010 school year, the time period at issue in this complaint, the Student was six years old and attended kindergarten at the District's Ezra Eby Elementary School (the School). The District placed the Student in a general education classroom with special education supports pursuant to an Individualized Education Program (IEP). The supports included: one-to-one paraprofessional assistance, occupational therapy, physical therapy, speech language services, extended school year services, and resource program services. The ISD was responsible for serving the Student through the provision of and supervision over the special education services.

Due to the alleged disability discrimination, the Complainant did not return the Student to the District at the start of the 2010-2011 school year or since. Instead, the Complainant enrolled the Student in a virtual academy pending the outcome of this complaint. The Student currently is receiving education services through the virtual academy at the first- and second-grade level.

In May 2008, the Student's pediatrician wrote a prescription for a service animal for the Student. During the 2008-2009 school year, the Student's family engaged in fundraising activities in the School community to help secure funds to obtain the service animal, of which the District was aware. In March 2009, the Complainant notified the District that the family had raised the necessary funds and that the family intended to obtain a service animal that would accompany the Student throughout the school day during the 2009-2010 school year. At that time, the Complainant also requested a copy of the District's policies regarding service animals. The Complainant informed OCR that the Superintendent appeared supportive at that time and, although the principal raised some concerns about allergies and liability, it was her understanding that the District would permit the Student to have the service animal at school.

On October 12, 2009, the principal received a letter from the Complainant, informing him that the Student would be missing school to go to the 10-day training with her service animal and of the expectation that the service animal would attend school with the Student, requesting a copy of the District's policies regarding service animals, and requesting a meeting to discuss

transition of the service animal into the school setting. In October 2009, the Student attended, along with the Complainant, a 10-day intensive training at the service animal training facility where she obtained her service animal. Prior to that time, the service animal received 10 to 12 months of training at the facility, including training specific to the Student, based on a comprehensive application submitted by the Student, which included a video of the Student demonstrating her functioning in various settings and her individual needs.

The Complainant was trained as the service animal's handler, because the Student currently is not physically strong enough to handle the service animal on her own. The Student was responsible for commanding the service animal, and the handler physically managed the service animal, including caring for its physical needs. The service animal, the Student, and the Complainant took and passed a public access test and were certified as a team by the training facility. The service animal must be taken back to the training facility once each year to be retested and recertified. The Complainant indicated that, once the Student is able to handle the service animal on her own, she and the service animal can be recertified as a team of two. Based on Recipient records, OCR learned that the Complainant provided the Recipients with documentation of the service animal's training, including a list of tasks the service animal has been trained to perform for the Student, as well as the handler and service animal training certificates. In addition, the Complainant provided the District with letters from the Student's treating physicians supporting the Student's need for the service animal,

which stated that the service animal would increase the Student's independence, that the service animal should be permitted to assist the Student with mobility and transition, and that the service animal would assist the Student in developing more independent motor skills.

According to the Complainant, when the Student returned to school on October 23, 2009, after the training, the Complainant and the service animal dropped the Student off at her classroom. Upon returning home, the Complainant received a telephone call from the principal, who told her that the service animal could not accompany the Student to school, because the principal had received complaints that other students were fearful of the service animal and that the School needed to do more research before allowing the service animal to attend with the Student. The District does not dispute that, in October 2009, it told the Complainant that the service animal was not allowed to accompany and assist the Student at school and throughout the school day.

The Complainant stated that, in November 2009, she asked to be permitted to drop the Student off at her classroom with the service animal, asserting to the Recipients that, as the School is a public place, she had the right to do so. She stated that, starting in December 2009, the Recipients permitted her to drop the Student off at her classroom with the service animal on numerous occasions. According to the Complainant, during that time, the service animal assisted the Student with taking off her coat and, on at least one occasion, with retrieving her dropped lunchbox.

The Recipients scheduled a meeting with the Complainant, which was held on December 11, 2009. According to the Complainant, only administrators from the District and the ISD met with the family on that date. The Complainant shared the specific tasks the service animal was trained to do to assist the Student and the ways in which the service animal would allow the Student to access the educational environment with increasing independence while reducing the Student's reliance on a human aide. The Complainant stated that the Recipients claimed they needed documentation proving the dog was certified as a service animal. The Complainant stated that the Recipients told her they would take away the aide from the Student's IEP services if the Student brought the service animal to school. She also stated, and Recipient records revealed the Complainant documented in a letter to the Recipients, that the Recipients cited various reasons during the meeting for not allowing the service animal, including concerns that other students or faculty would have allergies; fear that other students or staff would have phobias related to service animals; concerns about the service animal having an accident in the building; and concerns that the service animal would be a distraction to other students. She stated that she was also told the Student did not need a service animal because she already had an aide. The Complainant asserts that she was told the service animal would not be permitted to attend school with the Student for these reasons.

The Recipients, on or around January 4, 2010, received a letter from another of the Student's treating physicians, stating that the Student's service animal assists the Student with mobility issues, with the goal

of increasing the Student's independent motor skills. The letter emphasized that the Student would continue to require an aide when using the service animal. The Recipients held another IEP meeting for the Student on January 7, 2010. Documentation submitted by the Recipients shows that, at the January 7 meeting, the IEP team considered whether the service animal would be permitted by examining whether the service animal was necessary to provide the Student with a free appropriate public education (FAPE). The IEP team considered the Student's ability to handle the service animal on her own, as well as the impact of the service animal on the learning environment. Specifically, the IEP team considered the following questions:

- What disability-related educational need is the service animal intended to address?
- Taking into account the educational plan currently in place for the Student, including the provision of an individual aide, will the service animal enhance or hinder the Student's ability to progress in the general curriculum?
- Is the Student currently capable of being responsible for the service animal?
- Given the age and maturity level of the Student and her classmates, can the distraction created by the service animal be accommodated without comprising the learning environment?

The IEP team concluded that the Student was being successful in school environment without the service animal, that all of her needs were being met by the program and services in place, and that adding the service animal would not be beneficial to the Student.

The IEP team also concluded that the Student was not entitled to utilize the service animal at school, because an adult aide was performing the tasks the service animal would perform for the Student. The Recipients therefore concluded that the Student was receiving a FAPE. The Complainant signed the IEP, noting her disagreement. At the January 7 meeting, the Complainant agreed to mediation to attempt to resolve issues relating to the service animal. The first mediation session occurred on January 29, 2010.

Based on Recipient records, OCR learned that, on March 18, 2010, the physical therapist and speech language pathologist that treat the Student outside of school submitted a letter to the Recipients, explaining how they incorporate the service animal into the therapies they provide the Student. Specifically, the therapists explained how the service animal had accompanied the Student to therapy since November of 2009 and had been incorporated into therapy in a number of ways. For example, the service animal assisted the Student with directional control of her walker, with ambulation, and with stabilizing herself while transitioning into and out of her walker from the floor. The Student used the service animal as a bridge for transitioning from her walker to a standing or seated position at a table. She also consistently used the service animal safely to improve her sitting balance by having the service animal provide posterior support as needed. The letter also described how the service animal was directed behind or to the side of the Student when she was standing at a supportive surface for improved safety. Additionally, the therapists explained that the Student used the service animal to safely pick up dropped items. The letter stated that,

although the Student still needed adult stand-by assistance for added safety, her independence with transitioning was improving.

The parties signed a mediation agreement on March 22, 2010. As a result of the mediated agreement, the District allowed the service animal to attend school, starting on April 12, 2010, for a 30-day trial basis, with limitations placed on: the settings in which the service animal could accompany the Student; the activities with which the service animal could assist the Student; and the proximity of the service animal and the handler to the Student, including requiring the service animal to sit in the back of the room away from the Student. The trial period did not begin until April 12, because the Recipients required an additional ten calendar days prior to the start of the 30-day trial period in order to notify other students' parents and staff about the service animal and to solicit concerns related to the service animal from them. The trial period was extended on May 21, 2010, to end on June 11, 2010, the last day of school.

According to a letter the Recipients' attorney submitted to OCR on November 5, 2010, as well as other documents submitted by the Recipients, the express purpose of the trial period was to allow them time to evaluate and further observe the service animal, as well as the third-party handler (i.e., the Complainant), in the school setting. During the trial period, records kept by District staff who observed the service animal during the trial period contain detailed notes of each time: the service animal required more than one command or attempt to complete a task, because the service animal did not successfully complete the task

on the first try; the handler read a book or magazine, took notes, typed on her cell phone, said anything to or responded to a staff person or another student, or left the room to take her other child to his classroom before the bell rang; the Student did not use the service animal when she could have used the service animal; or the Student made a face or seemed displeased when something the service animal retrieved for her had slobber on it. Based on Recipient records, OCR learned that, during the trial period, the Recipients prohibited the Student from participating in school-related activities such as a school play, "Relay for Life," and "field day" with the service animal. Recipient records revealed that the Recipients also prohibited the service animal from accompanying and assisting the Student during recess, lunch, computer lab, library activities, and other specials, and prohibited the service animal from assisting the Student during the provision of therapy services. Furthermore, according to letters, handwritten notes, and emails that the Recipients submitted to OCR, the Recipients forbade the use of the service animal for certain tasks that the service animal had been specifically trained to do, such as assisting the Student with toileting. In order for the Student to be allowed to use the service animal for toileting, the Recipients required that she demonstrate her use of the service animal while using the toilet, with the stall door open and four adults observing, which embarrassed her.

The School principal kept a handwritten log of parent and staff concerns expressed about the service animal, which the Recipients submitted to OCR along with emails received about the service animal. These showed that one teacher and two students were

reportedly allergic to dog dander, one teacher had a phobia about dogs, and one parent expressed concern about her child being in the presence of a dog, because the child had been attacked by a dog several years before. Four parents submitted concerns that the service animal might be a distraction to other students, although only two of the parents' children were in the same classroom as the Student.

The Recipients documented that the service animal barked on one occasion and growled on another occasion while at the School. The growling incident occurred just after school had ended and students were being released. The barking incident also occurred at the end of the school day. Based on Recipient records, OCR learned that the barking occurred when the service animal saw two boys roughhousing. The Complainant told OCR, and documentation submitted by the Recipients confirms, that she told the service animal to stop on each of those occasions and that he remained under her control.

According to letters Recipients submitted to OCR, including a letter, dated November 5, 2010, from the Recipients' attorney, the Recipients' position is that they are not required to permit the service animal to accompany and assist the Student, because they are meeting all of the Student's educational needs through the provision of an aide. They do not acknowledge the dog as a service animal; one articulated reason for this position at the time the OCR opened the complaint was that the Student could not handle the dog on her own. The Complainant contends that the service animal provides the Student with increased independence and that the Recipients' refusal to allow the service animal

to accompany and assist the Student at school denies the Student equal access to the Recipients' program by not allowing her to increase her independence and by forcing her to rely on an aide instead of decreasing her reliance on others.

During its investigation, OCR reviewed the District's policy with respect to service animals (the Policy) that was provided by the District. This policy is titled "Guidelines—Office of the Superintendent, Napoleon Community Schools," with the heading "Access to Equal Educational Opportunity." The guidelines are four pages long, and only one provision, under "Facilities," discusses "guide dogs." The Policy requires students seeking to utilize a guide dog to assist the student at school facilities, events, and programs to provide evidence of the dog's certification for that purpose. The Policy also states that proof of liability insurance must be provided if a dog is still in training.

OCR identified numerous compliance concerns with the Policy. For example, the District's policy does not contain a definition of "service animal" and, instead, uses the more limited term "guide dog." Additionally, the Policy requires a student seeking to use a service dog in the school environment to provide documentation of the dog's certification, whereas the Title II regulation explicitly states that public entities cannot require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. Moreover, the Policy does not specify the permissible inquires that a public entity can make and the circumstance in which the public entity may not make inquiries, such as when it is readily apparent that an animal is trained to do work or perform tasks

for an individual with a disability. The Policy also does not specify the circumstances in which the service animal may be properly excluded, including the proper inquiries that must be made when the District believes a service animal presents a direct threat to others.

- **Applicable Legal Standards**

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, as well as Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the Department and by public entities, respectively. As recipients of such financial assistance and as public institutions, the Recipients are subject to these laws. Title II is not to be construed to provide a lesser standard than the standards applied under Section 504. The Title II regulation in effect at the beginning of the events at issue in this complaint has since been amended. The new Title II regulation took effect on March 15, 2011.

The Section 504 regulation, at 34 C.F.R. § 104.33, requires a recipient school district to provide a free appropriate public education (FAPE) to each qualified individual with a disability within its jurisdiction, regardless of the nature or severity of the individual's disability. A FAPE is defined as th provision of regular or special education and related aids and services that are designed to meet the individual educational needs of individuals with disabilities as adequately as the needs of individuals without disabilities are met and which have been developed in accordance with process

requirements of 34 C.F.R. §§ 104.34 (educational setting), 104.35 (evaluation and placement), and 104.36 (procedural safeguards). In conformance with Appendix A of the Section 504 implementing regulation, it is OCR's policy that, except in extraordinary circumstances, OCR does not review the results of individual placement decisions ro resolve disputes over the content of education plans, so long as the procedural requirements of the Section 504 regulation regarding identification, evaluation, placement, and procedural safeguards are met.

As a general rule, a school district's responsibilities to students with disabilities in the elementary and secondary setting may be satisfied through adherence to Section 504 FAPE procedures. However, there are situations in which a student with a disability may allege disability discrimination that is properly analyzed as a question of alleged different treatment, program exclusion, or failure to provide equal opportunity on the basis of disability under the Section 504 implementing regulation at 34 C.F.R. §§ 104.4(a) and (b) and the Title II implementing regulation at 28 C.F.R. §§ 35.130(a) and (b) and/or as a denial of a reasonable modification under Title II implementing regulation at 28 C.F.R. § 35.130(b)(7).

In some circumstances, Title II provides greater protections than Section 504 for persons with disabilities. Both the current Title II regulation and the former Title II regulation, which was in effect at the time of the Recipient's alleged non-compliance, prohibit recipient and public school districts from, on the basis of disability, excluding a qualified person with a disability from participating in, denying a student with

the benefits of, or otherwise subjecting a student to discrimination under any district program or activity. In addition, both the current and former Title II regulations require public entities to make reasonable modifications to policies, practices, or procedures when such modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modification would fundamentally alter the nature of the service, program, or activity.

Despite the lack of a specific provision in the former Title II regulation, the U.S. Department of Justice (DOJ) had taken the position that the ADA required schools, including those responsible for elementary and secondary education, to allow individuals with disabilities to be accompanied by service animals except for rare instances in which the animals' actual behavior poses a direct threat to the safety of others or results in a fundamental alteration of the nature of a program.

The current Title II regulation clarifies that public entities must modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability. The regulation implementing Title III of the Americans with Disabilities Act of 1990 in effect at the same time of the former Title II regulation and therefore during the time at issue in this complaint defined "service animal" as any guide dog or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal

protection or rescue work, pulling a wheelchair, or fetching dropped items.

Under the former and the current Title II regulation, a public entity is required to permit an individual with a disability to be accompanied by the individual's service animal in all areas of a public entity's facilities where members of the public; participants in services, programs, or activities; or invitees, as relevant, are allowed to go. In addition, a public entity is not permitted to ask about the nature or extent of a person's disability or require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. If it is not readily apparent that an animal is trained to do work or perform tasks for an individual with a disability, the public entity is permitted to make two inquiries to determine whether an animal qualifies as a service animal: 1) if the animal is required because of a disability; and 2) what work or task the animal has been trained to perform. Those inquiries would not be permitted if, for example, the dog is observed providing assistance with stability or balance to an individual with an observable mobility disability.

The current Title II regulation clarifies that an individual with a disability is not required to be the animal's handler in order to be covered by the rule's provisions.

A public entity may ask an individual with a disability to remove a service animal from the premises if the animal is out of control and the animal's handler does take effective action to control it, if the animal is not housebroken, or if the animal poses a direct thereat to the health and safety of others. The determination of

whether a service animal poses a direct threat must be based on an individualized assessment and reasonable judgment that relies on current medical knowledge or on the best available objective evidence to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.

Application of the Title II standard advances Congress's finding in enacting Title II that "the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, [and] independent living."

- **Analysis and Conclusion**

As a threshold matter, the evidence OCR obtained establishes that the Student has a disability and is entitled to the protections of these laws. The evidence also supports that the dog in question meets the definition of a "service animal" and that the Recipients had sufficient information to make that determination. The data submitted by the Recipients establishes that it was readily apparent that the animal was trained to do work or perform tasks for an individual with a disability. Therefore, the Recipients should have modified their policies and practices to permit the service animal to accompany and assist the Student through the school day, as no further inquiries were permissible. Instead, the Recipients held multiple meetings, did not acknowledge the dog was a service animal, and repeatedly stated that the Student's needs were being met by an aide. When the Recipients did permit the service animal to be brought onto District

facilities, they placed many restrictions on its use, in effect preventing the service animal from serving the Student.

In certain circumstances, limiting the ability of a student and the parent to choose the particular personal aid, such as mobility aids, would inappropriately inhibit the student's independence and result in discrimination. For example, a school district would violate the antidiscrimination requirements if it required a student who uses a wheelchair to be carried or it if required a blind student to be led through the classroom by holding the arm of his teacher instead of permitting the student to use a service animal or a cane. The Recipients' assertions that the Student does not need her service animal for school, because they will provide her a human aide, similarly violate the antidiscrimination provisions of Section 504 and Title II.

In applying the Section 504 FAPE standard, the Recipients determined that the Student was not entitled to utilize the service animal at school, because all of the tasks the animal would perform for the Student were being performed by an adult aide; thus, the Recipients concluded that the Student was receiving a FAPE. A Section 504 FAPE analysis in this case, however, fails to take into account one of the fundamental purposes of Title II: to increase the independence of individuals with disabilities. In addition, as noted above, Section 504 includes provisions relating to equal opportunity that support providing the Student with the opportunity to access the District's programs as independently as possible. Moreover, the decision to deny the Student the service

animal in the school setting would have wider implications for the Student outside of the school day. Activities that the service animal performs for the Student during school, such as providing assistance with balance and support, retrieving dropped items, and taking off her coat, are the same type of activities for which the Student uses the service animal outside of the school.

In this case, contemporaneous documentary evidence demonstrates that the service animal became confused about whom to assist when the service animal and the handler were repeatedly made to sit in the back of the classroom away from the Student during the trial period. This evidence suggests that refusing to allow the service animal to assist the Student at school, which she is required to attend for nine months a year, would result in a more prolonged and complete separation that would likely cause the Student's working relationship with the service animal to deteriorate.

Based on the foregoing, OCR has determined that the Recipients violated Section 504 and Title II by failing to modify their policies, practices, or procedures to permit the Student's service animal to accompany her to and assist her at school, thus denying and/or significantly limiting the Student's ability to access the District's programs and activities with as much independence as possible.

The Recipients do not admit any violation of Section 504 of the Rehabilitation Act of 1973 or Title II of the Americans with Disabilities Act of 1990 with regard to the allegations in the complaint and do not agree with the legal conclusions or factual determinations

contained within this letter of findings. Notwithstanding their disagreement, the Recipients, in the interest of resolving this matter, voluntarily submitted the enclosed Resolution Agreement (the Agreement), which, when fully implemented, will resolve the identified compliance concerns relating to Section 504 and Title II and the Student's service animal. Specifically, the Agreement requires the Recipients to invite the Student to return to school at the District and to be accompanied and assisted by her service animal at school in all school-related activities; to convene a meeting of School administrators and all staff who will work with the Student and the Student's parents to create a plan for fully and effectively integrating the service animal into the school environment and using the service animal for all activities with which the service animal is trained to assist the Student, and to determine the services the School can provide to encourage and ensure the full and effective integration of the service animal into the school environment; to provide training to School staff and an assembly for students at the School on the role of service animals; and to revise and submit to OCR for review their policies and procedures with respect to service animals, and, once those policies are approved by OCR, to adopt the policies and procedures, publish them on its website, and notify, by effective means, students, parents, staff, and guardians of the policies and procedures as well as where a copy may be obtained.

- **Summary of Investigation to Date – Alleged Different Treatment Based on Disability**

The Complainant also alleged that, during the 2009-2010 school year, the District initially prohibited the Student from using playground equipment at the School, even though the Student was capable of using it and used it with her parents after school, and that the District later treated her differently from students without disabilities by requiring her to select only two activities before going outside for recess, while students without disabilities were not required to limit their choices in any way. Although the Letters of Notification issued by OCR in this case also included an allegation that the District playground equipment at the School was inaccessible, during the investigation, the Complainant clarified that she was not raising this as an allegation and that her allegation focused on the District's limiting the Student's use of the playground. The Complainant told OCR that she and her husband have allowed the Student to play on the playground equipment after school. She explained that, because of the Student's disability, the Student needed some assistance but that, with assistance, most of the playground equipment was usable by her.

According to the Recipients, the Student's special education aide was responsible for accompanying the Student during outdoor recess, including allowing the Student to play on playground equipment. The aide began keeping daily logs on April 12, 2010, at the start of the trial period for the service animal, through the end of the school year. OCR reviewed the aide's daily logs. The logs indicate that, prior to outdoor recess time, the Student was told to select two activities

during recess. In one log entry, dated April 15, 2010, the aide indicates that, when the Student asked about playing on the slide, the aide replied that there were too many kids out there (on the playground) and that it could be dangerous.

OCR reviewed summary notes of the Student's May 3, 2010, IEP review provided by the Recipients, in which the team is noted as having discussed playground opportunities for the Student. The notes indicate that the Student's parents wanted her to be able to participate on the playground slide and to choose the activity that she would like to participate in, although they preferred that she use the mileage track only once per day. The summary indicates that an extra aide could help to catch the Student when she was going down the slide, could provide the Student with options so that she could choose activities, and could check into modifying activities such as sidewalk chalk, bocce ball, and kickball so that the Student could participate. The IEP summary notes made no specific references to what activities would be appropriate for the Student to be involved in during recess. The only general reference to recess was listed under the "Adaptive/Independent Living Skills" section of the Student's IEP:

> She also requires adult assistance when using the restroom, dressing for outdoors, recess and moving between her walker and a chair as well as while in special classes (gym, music and art). [The Student]'s condition of Cerebral Palsy affects her balance, strength, and endurance and ability to complete all classroom activities both academic and social.

Prior to the completion of OCR's investigation of this allegation and any compliance findings, the Recipients indicated to OCR that they would like to resolve this allegation.

- **Applicable Legal Standards**

The regulations implementing Section 504 provides at 34 C.F.R. § 104.4(a) that no qualified person with a disability shall, on the basis of disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination by recipients of Federal financial assistance from the Department. Provision of different aids, benefits, or services in a recipient's programs and activities on the basis of disability is prohibited unless such action is necessary to provide the student with a disability with aids, benefits, or services that are as effective as that provided to others. 34 C.F.R. § 104.4(b)(1)(iv). Title II contains similar provisions at 28 C.F.R. §§ 35.103(a) and (b)(1)(iv).

- **Resolution**

As noted above, before OCR completed its investigation, the Recipients asked to resolve the playground issue voluntarily pursuant to Section 302 of OCR's Case Processing Manual, which provides that an allegation may be resolved before the conclusion of an OCR investigation if a recipient asks to resolve the allegation and signs a resolution agreement that addresses the complaint allegation. Such a request does not constitute an admission of liability on the part of the recipient institution, nor does it constitute a determination by OCR that the recipient institution has violated any of the laws that OCR enforces with

respect to that allegation. The provisions of the resolution agreement are to be aligned with the complaint allegation or information obtained during the investigation and consistent with applicable regulations.

As noted above, the Recipients have signed the enclosed resolution agreement, which, once implemented will fully address the complaint allegation related to recess. The agreement requires the Recipients to allow the Student to select her recess playground activities in the same manner as similarly situated students without disabilities and to be assisted by her service animal. The agreement also requires the District to notify all staff at the School who monitor the Student during recess, or who monitor recess activities generally, of these nondiscrimination requirements.

- **Conclusion**

This concludes our investigation of this matter. OCR will monitor the Recipients' implementation of the Agreement. If the Recipients do not fully implement the Agreement, OCR will reopen the case and take appropriate action to ensure the Recipient's full compliance with Section 504 and Title II.

The letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. A complainant may have the right to file a private suit in Federal court whether or not OCR finds a violation.

If you have any questions about this letter, please contact Ms. Karla K. Ussery, Team Leader, by telephone at (216) 522-4970 or by e-mail at Karla.Ussery@ed.gov. Please direct any communication about the Recipients' implementation of the Agreement to Ms. Vanessa Coterel, who will be monitoring the implementation. Ms. Coterel can be reached at (216) 522-4974 or Vanessa.Coterel@ed.gov. We look forward to receiving the Recipients' first monitoring report on or before May 31, 2012.

Sincerely,

/s/_____

Catherine D. Criswell
Director

Enclosure

Resolution Agreement
Napoleon Community Schools,
OCR Docket #15-10-1268
Jackson County Intermediate School District,
OCR Docket #15-10-1269

Napoleon Community Schools and Jackson County Intermediate School District (collectively, the Recipients) agree to enter into this Resolution Agreement for the purpose of amicably and expeditiously resolving OCR Docket #15-10-1268 and #15-10-1269 and ensuring compliance with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, as amended during the course of this investigation. By entering into this Agreement, the Recipients do not admit any violation of Section 504 of the Rehabilitation Act of 1973 or Title II of the Americans with Disabilities Act of 1990 with regard to allegations in the complaint. The Recipients do not agree with the legal conclusions or factual determinations contained within the accompanying letter of finding. Nothing contained in this Agreement shall be considered, construed, or used as an admission of liability, statutory or regulatory violation, or any other illegal act, by the Recipients. The Recipients agree to take the actions indicated below:

I. Individual Student

A. Service Animal

1. By May 31, 2012, the Recipients will invite the student at issue in this complaint (the

Student) to return to Ezra Eby Elementary School (the school) and notify her that, should she return, she will be provided the opportunity to have a service animal accompany and assist her throughout the school day, in all settings and activities within the school to the extent the service animal has been trained to assist her and to the greatest degree possible. In implementing this provision, the Recipients specifically acknowledge and agree to the following:

a. The Recipients will make reasonable modifications to their policies, practices, and procedures as necessary to permit the Student's use of her service animal to do work and perform tasks for the benefit of the Student as an individual with a disability, including tasks to increase the Student's independence, unless doing so would constitute a fundamental alteration of the District's service, program, or activity. In those circumstances where the Recipients believe that the proposed action would fundamentally alter the service, program, or activity, the Recipients have the burden of proving that compliance with Section 504 and Title II would result in such alteration. The decision that compliance would result in such alteration must be made by the head of the Recipients or his or her designee after considering all resources available for use

in the funding and operation of the service, program, or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with Section 504 or Title II would result in such an alteration, the Recipients shall take any other action that would not result in such an alteration but would nevertheless ensure that, to the maximum extent possible, the Student, as an individual with a disability, receives the benefits or services provided by the Recipients. The Student will be permitted, in all settings, to be accompanied by and assisted in all activities that a service animal is trained to assist her with throughout the school day, with the limited exceptions discussed in paragraphs I.A (c)-(e) below.

b. The Recipients will fully integrate the Student and her service animal, including actively encouraging and utilizing all of the types of assistance the service animal has been trained to provide into each setting and activity, including both academic and nonacademic, in which the Student participates throughout the school day with students without disabilities.

c. Consistent with Title II's regulatory provisions governing the use of service animals, the Recipients will only exclude

the Student's service animal from their premises if (i) the service animal is out of control and the animal's handler does not take effective action to control it; or (ii) the service animal is not housebroken.

d. The Recipients will only limit the settings in which the Student is accompanied by a service animal, the activities with which she uses service animal, and the types of assistance a service animal provides during a particular activity where the Student's use of the service animal would pose a "direct threat." Pursuant to the Title II regulation at 28 C.F.R. § 35.104, a "direct threat" is defined as a significant risk to the health and safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

e. In making any determination that the Student's use of a service animal would pose a direct threat to the health or safety of others in a particular setting or activity, the Recipients will make an individualized determination, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies,

practices or the provision of auxiliary aids or services will mitigate the risk, pursuant to 28 C.F.R. § 35.139.

f. The Recipients acknowledge their obligation to permit the Student equal access to their programs and activities under Section 504 and Title II through the use of a service animal and, therefore, will not prohibit a service animal from completing tasks for the Student or assisting the Student in completing an activity for the reason that a staff person is identified to complete that task or assist the Student with that activity for purposes of providing her with a free appropriate public education (FAPE) pursuant to the Student's Individualized Education Program (IEP).

g. The Recipients will not limit a service animal's or the handler's physical proximity to the Student, except as is provided by paragraphs I.A (c)-(e) above.

h. Except as provided by paragraphs I.A. (c)-(e) above, the Recipients will not limit the Student's activities or separate her from her peers because of her use of a service animal. For example, the Student will be permitted to participate, while accompanied and assisted by her service animal, in all field trips, extracurricular activities, and other school-sponsored events with her classmates to the maximum extent possible.

i. The Recipients may place reasonable limitations on the activities that the handler may engage in while in the classroom where the activities are unrelated to the handler's responsibilities regarding a service animal for the purpose of ensuring that the handler's activities do not create a disruption to the education environment. Napoleon Community Schools agrees to provide the handler with access to facilities, including an adult restroom and a place to take a break or eat lunch. The handler will be provided copies of and be expected to comply with the Recipients' established policies that apply in the school setting, including those that apply to fire drills and volunteers. In addition, the handler will submit to a criminal background check that is required of all personnel who regularly interact with children in the school setting.

j. The Recipients will not refuse the Student the services of an aide for the sole reason that the Student is accompanied by a service animal if aide services are required for the Student to receive a free appropriate public education under the Section 504 regulation at 34 C.F.R. § 104.33.

2. Should the Student reenroll, the Recipients will promptly convene a transition meeting of School administrators and all staff who will

be working with the Student and the Student's parents to ensure the Student's smooth transition back into the school. At that meeting, the group will determine how to fully integrate the Student's service dog into the educational environment, including in all settings and for all school activities in which the Student participates, including field trips and afterschool/extracurricular activities. The group will develop a plan to ensure the provision of support and services to fully and effectively integrate the service dog into the school environment and school activities, including how each staff person working directly with the Student, as well as school administrators, understand the requirement to and how to fully and meaningfully support the successful integration of the Student's service animal into all school activities and settings. The Student's IEP team also will meet to identify steps to ensure the Student's transition back to school and her receipt of a FAPE.

REPORTING REQUIREMENTS: By May 31, 2012, the Recipients will provide OCR with a copy of the notice and invitation issued to the Student's parents pursuant to Item I.A.1 above. Within 30 school days of the Student's reenrollment at the school, the Recipients will submit to OCR documentation to demonstrate their implementation of Items I.A.2 above, including: any documentation produced as a result of the meeting regarding the Student's reintegration into the school with a service animal; the date of the

meeting; the names and job titles of the participants; and a copy of the steps or plan developed to ensure the Student's reintegration at school with full use of a service animal and to address the requirements of I.A.1-I.A.2 above.

B. Playground

Napoleon Community Schools will ensure that the Student, regardless of her disability, is provided an equal opportunity to participate in activities on the playground in the same manner as is provided to students without disabilities, including being permitted to spontaneously pick activities on the playground after recess has commenced and to switch activities during recess as students without disabilities are permitted to do. In addition, the Student will be permitted to be accompanied and assisted by a service animal during outdoor recess and will be only limited in that regard for the reasons identified in paragraphs 1.A (c)-(e) above. Napoleon Community Schools will notify relevant staff of this requirement.

REPORTING REQUIREMENT: Within 30 school days of the Student's reenrollment at the school, Recipient Napoleon Community Schools will submit to OCR documentation to demonstrate its implementation of Item I.B above, including: the names and positions of all relevant staff notified that the Student must be permitted to spontaneously choose the activities she wishes to participate in during each recess and that she may be accompanied and assisted by a service animal during outdoor recess, the date that each person

was notified, the person who provided the notification, and verification that the Student is being provided an equal opportunity to participate in playground activities (verification of this last provision may be demonstrated by making relevant Recipient witnesses available for an OCR interview).

II. District-Wide Action

A. Training

1. By September 15, 2012, Napoleon Community Schools will provide training to the staff at the School by a person(s) knowledgeable about and who has experience training or working with service animals and a person knowledgeable about the requirements of Section 504 and Title II regarding service animals. The training will include a question-and-answer period.

2. Within 30 school days of the Student's reenrollment at Napoleon Community Schools, Napoleon Community Schools will provide an assembly to all students at the school about service animals. The assembly will include an age-appropriate discussion of the role of service animals and etiquette when students or staff come into contact with a person using a service animal.

REPORTING REQUIREMENTS: By September 15, 2012, Napoleon Community Schools will provide OCR with documentation to demonstrate its implementation of paragraph II.A.1 above including: the date(s) of the training provided; sign-

in sheets with the name and job title of each staff member who attended; the names, titles and qualifications of the individuals who conducted the training; and a copy of any materials used or distributed during the training and an outline of what was covered in the training if not self-evident from the materials. Within 30 school days of the Student's reenrollment at Napoleon Community Schools, Napoleon Community Schools will provide OCR with documentation to demonstrate its implementation of paragraph I.A.2 above including: the date of the assembly; a list of the classes of students who attended the assembly; the name and a brief description of the qualifications of the assembly presenter; and any materials used and distributed during the assembly.

B. Policies and Procedures

1. By May 31, 2012, the Recipients will each draft or revise and submit to OCR for review and approval their policies and procedures regarding the use of service animals by students with disabilities to ensure that the policies and procedures are consistent with Section 504 regulation at 34 C.F.R. § 104.4 and the Title II regulation at 28 C.F.R. §§ 35.104, 35.130, and 35.136.

2. Within 30 school days of receipt of the OCR-approved policies and procedures developed pursuant to Item II.B.2 above, each Recipient will: adopt the OCR-approved policies and procedures; publish them on their respective websites; notify parents and guardians of the policies and procedures and where a copy

may be obtained by a means that is designed to reach each parent and guardian; and notify staff of the revised policies and procedures by distributing a memorandum to staff or by including notice of them in a staff meeting or in-service training.

REPORTING REQUIREMENTS: By May 31, 2012, each Recipient will submit its revised or drafted policies and procedures pursuant to Item II.B.1 to OCR for review and approval. Within 30 school days of receipt of the OCR-approved policies and procedures, each Recipient will submit information documenting its implementation of Item II.B.2 above, including a link to the policies and procedures on each Recipient's website, copies of the written notification issued to parents and guardians, and an explanation as to how staff were notified of the revised policies and procedures.

GENERAL REQUIREMENTS

The Recipients understand that OCR will not close the monitoring of this agreement until OCR determines that the Recipients have fulfilled the terms of this agreement and are in compliance with Section 504 and its implementing regulation at 34 C.F.R. § 104.4 and 34 C.F.R. Part 104, Subpart D, and with Title II and its implementing regulation at 28 C.F.R. §§ 35.130 and 35.136, which are at issue in this case.

The Recipients understand that, by signing this agreement, they agree to provide data and other information in a timely manner in accordance with the reporting requirements of this agreement. Further, the Recipients understand that during the monitoring of

this agreement, if necessary, OCR may visit one or both Recipients, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether each Recipient has fulfilled the terms of this agreement and is in compliance with Section 504 and its implementing regulation at 34 C.F.R. § 104.4 and 34 C.F.R. Part 104, Subpart D, and with Title II and it implementing regulation at 28 C.F.R. §§ 35.130 and 35.136.

/s/_____ 4-26-12

Jim Graham, Superintendent
Napoleon Community Schools

Date

/s/_____ 4/25/12

Richard Rendell, Director of
Special Education Jackson ISD
Jackson County Intermediate
School District

Date